

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1249 ¹³₁₄₅

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex rel.
ALVIN BLASSINGAME,

Petitioner-Appellant,

-against-

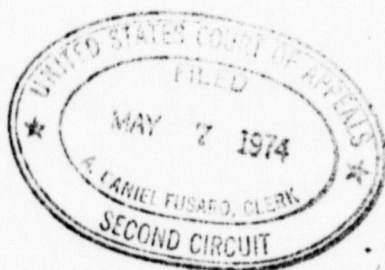
THE HONORABLE LOUIS GENGLER,
Warden,
Federal House of Detention,

Respondent-Appellee.

Docket No. 74-1249

APPENDIX TO THE BRIEF
FOR PETITIONER-APPELLANT

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
DENYING A PETITION FOR WRIT OF HABEAS CORPUS



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Petitioner-
Appellant
FEDERAL DEFENDER SERVICES UNIT
606 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

E. THOMAS BOYLE,
Of Counsel

ED STATES DISTRICT COURT

Jury demand date

73 CIV. 5462

No. 105 Rev.

TITLE OF CASE

Filed:

1/25/74

ATTORNEYS

~~UNITED STATES OF AMERICA ex rel~~
~~ALVIN BLASSIGAME~~

For plaintiff:

ROBERT KASANOF

FEDERAL DEFENDER SERVICES UNIT
15 Park Row, N.Y.C. N.Y. 10038

VS.

LOUIS GENGIER, IN HIS CAPACITY AS WARDEN OF THE FEDERAL HOUSE OF DETENTION, 427 West Street, NEW YORK, NEW YORK	
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For defendant:

23 CIV. 5462

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISR.
Mailed X	Clerk	DEC 21 1973			
Mailed ✓	Marshal				
Action:	Docket fee				
CORPUS.	Witness fees				
rose at:	Depositions				

73 CV. 5462

PROCEEDINGS

Date of
Judgment

- 1-73 Filed petition for writ of habeas Corpus.
- 21-73 Filed petitioner's affidavit and order to show cause for a writ of habeas corpus.
Ret. 12-27-73 at 10:00 a.m. CANNELLA, J.
- 3 Filed respondent's affidavit of Jeffrey I. Glekel in opposition to petition for writ of habeas corpus.
- 1-74 Filed respondent's affidavit of Jeffrey I. Glekel dated 1-3-74 .
- 17-74 Filed respondent's memorandum of law.
- 17-74 Filed Opinion # L0232-- I find petitioner has not been unduly prejudiced and order the United States probation authorities to reschedule petitioner's revocation hearing without delay. Writ dismissed. So ordered- CARTER, J. (m/n)
- 16-74 Filed consent order- that petitioner Alvin Blassingame be permitted to marry Brenda Williams at the Associate Warden's office of the Federal House of Detention, 427 West Street, New York, N.Y. on Friday, January 25, 1974.
CARTER, J.
- 17-74 Filed letter of Alvin T. Blassingame to CARTER, J. dated 1-5-74
- 17-74 Filed affidavit of Claude S. Nock, Jr. dated 12-28-73
- 17-74 Filed affidavit of Frederick O. Griffin, Jr. dated 1-2-74.
- 15-74 Filed petitioner-appellant's notice of appeal from an order entered 1-16-74 denying a petition. (Copies mailed L.S.)

UNITED STATES OF AMERICA ex rel :
ALVIN BLASSINGAME, :

Petitioner, :

-against- :

LOUIS GENGLER, in his capacity as :
Warden of the Federal House of :
Detention, 427 West Street, New :
York, New York. :

Index No. 73 Civ. 5462
J.M.C.

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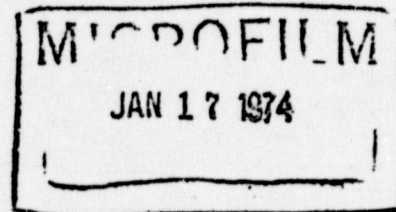
United States District Court
Southern District of New York

LARRY S. GREENBERG, ESQ., of New York City,
Federal Defender Services Unit, Attorney for Petitioner;
ROBERT KASANOF, ESQ., of Counsel.

PAUL J. CURRAN, ESQ., United States Attorney,
Southern District of New York, for Respondent;
JEFFREY I. GLEKEL, ESQ., of Counsel.

CARTER, District Judge.

OPINION



The motion is denied. On September 2,
1969, petitioner was sentenced to an indeterminate
sentence under Title 18 U.S.C. §5010(b) (Youth Cor-
rections Act) for wire fraud offenses. He was re-
leased on parole under supervision of the United
States Probation Office of this district. On

February 26, 1973 a warrant was issued for petitioner's arrest charging various parole violations. These charges were further supplemented on March 19, 1973 and April 5, 1973 and the warrant of arrest was amended to cite these additional parole violations.

The warrant was not executed and petitioner was not taken into custody until July 2, 1973, in Miami, Florida. He was then incarcerated in the Dade County Jail. Counsel was appointed for petitioner through the Public Defender's Office, and at the request of his appointed counsel, a preliminary interview was not scheduled until July 26, 1973. On that date counsel for petitioner requested a postponement of the preliminary interview in order for petitioner to undergo psychiatric evaluation to determine his competency. Dr. Albert Jaslow was appointed by the court to undertake the requested examination. Dr. Jaslow completed his examination and filed a report of his findings on August 15, 1972. As a result, petitioner was transferred to the Medical Center in Springfield, Missouri on September 27, 1973 for further psychiatric examination and a more complete psychiatric evaluation. On October 31, 1973 petitioner was declared competent to understand and

participate in parole revocation proceedings.

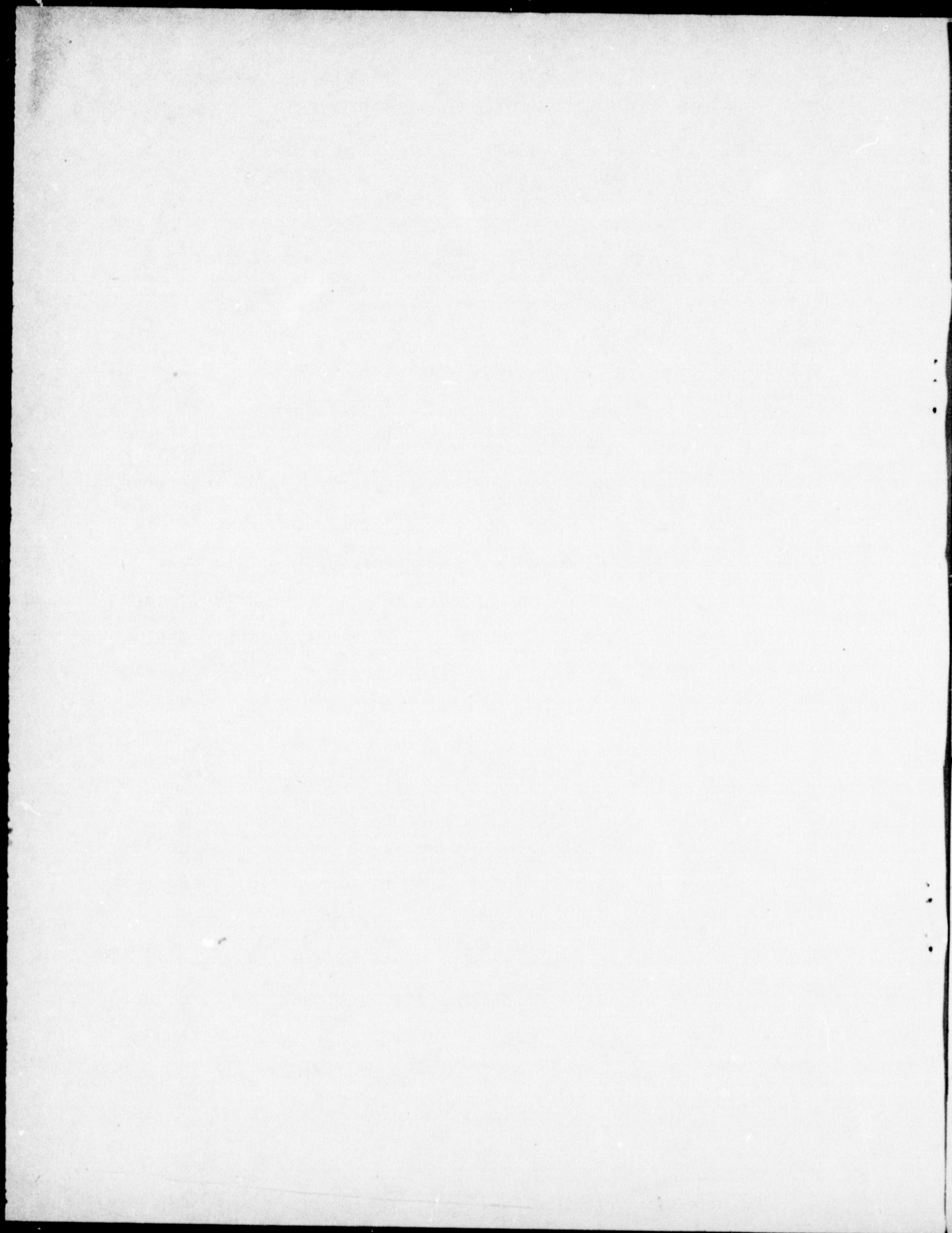
While in Springfield, a petition was filed for a writ of habeas corpus in the United States District Court for the Western District of Missouri. On October 31, 1973 that court held a hearing on the petition and dismissed the petition on being advised that petitioner would be returned to the Southern District of New York and that a revocation hearing would be held there within two weeks.

The United States Probation Office in New York was informed that petitioner had arrived at the Federal House of Detention on November 19 and scheduled a revocation hearing for petitioner in January.

The petitioner's parole cannot be revoked without a hearing conforming to basic standards of due process. Morrissey v. Brewer, 408 U.S. 471 (1972); Gagnon v. Scarpelli, 411 U.S. 471 (1972). It is clear also that due process mandates that such a hearing be accomplished without undue delay, but the speedy hearing due process requirements lay down no rigid timetable. Each case must be decided on its own merits, and the critical inquiry is whether the delay has in any way prejudiced petitioner and whether demand had been made. See, e.g., Barker v. Wingo, 407 U.S. 514,

530 (1972); Cotner v. United States, 409 F.2d 853, 857 (10th Cir. 1969); and see discussion in United States v. Singleton, 460 F.2d 1148, 1150 (2d Cir. 1972). Petitioner urges that the delay in granting him a hearing between July, 1973, when he was taken into custody, and January, 1974, when the revocation hearing was scheduled, violates due process standards. There is no recitation of any facts of prejudice, nor does petitioner assert that he did not in fact violate the parole. He argues merely that failure to hold his revocation hearing, now scheduled some two weeks after the date his petition was filed, violates his rights in and of itself.

The record shows that the delay between July 2, when petitioner was taken into custody, and October 31 occurred because of petitioner's condition and at his request. Therefore, the delay in question begins to run from October 31. The January revocation hearing was scheduled in November. Apparently, the United States Probation Office was not advised that the court in Missouri had been led to believe that the hearing would be scheduled within two weeks after his return to New York. It is

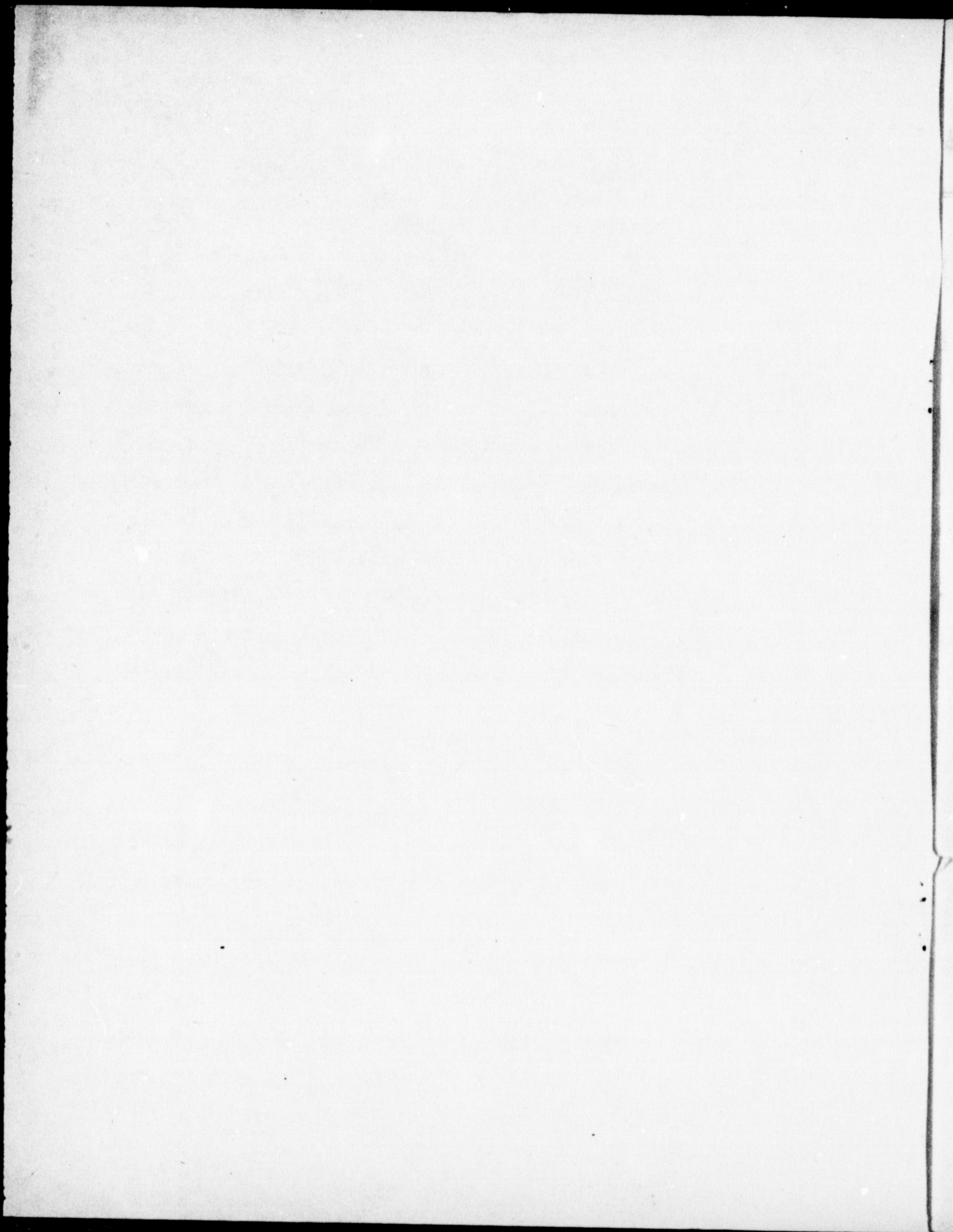


authorities did not know of the representation made in their behalf in Missouri. Whether it would have made any difference, however, is difficult to determine, since the court is advised that the January 4 scheduled hearing is the first to be scheduled since petitioner's return here. Petitioner has now refused to agree to proceed with the January 4 hearing prior to a determination of his rights by this court. I find petitioner has not been unduly prejudiced and order the United States probation authorities to reschedule petitioner's revocation hearing without delay. Writ dismissed.

SO ORDERED.

Dated: New York, New York
January 16, 1974


ROBERT L. CARTER
U.S.D.J.



I certify that I have ^{personally} served
a copy of the appendix herein on
AUSA Glebel in the Southern District
this 7th day of May 1974.